REMARKS

Claims 2 and 12 are herein cancelled.

Claims 1, 6, 11, 16-19 are herein amended.

Allowable Subject Matter

Claims 2-3 and 6-10 were indicated as being allowable if rewritten in independent form including all of the limitations of the base claim (i.e., claim 1) and any intervening claims.

In order to expedite the case towards allowance, claim 1 has been amended to include the subject matter of former claim 2.

In addition, each of independent claims 16 and 17 have been amended to include the subject matter of former claim 2. Thus, claims 16 and 17 are in condition for allowance.

Rejections Under Section 102(e)

Claims 1, 11, 14-19 and 21-22 were rejected under 35 U.S.C. Section 102(e) as being anticipated by Horton (U.S. Patent No. 6,421,696). Applicant respectfully disagrees with these rejections based on the reasoning presented in the previous office action response (mailed on 9/03/2004).

Rejection Under Section 103(a)

Claim 12 was rejected under 35 U.S.C. Section 103(a) as being obvious over Horton (U.S. Patent No. 6,421,696) (hereinafter referred to as "the Horton patent"). Applicant respectfully traverses this rejection based on the reasoning asserted in Applicant's response of 9/03/2004 and the following reasoning.

MPEP 706.02(l)(e) states:

> "Examiners are reminded that a reference used in an anticipatory rejection under 35 U.S.C. 102(e), (f), or (g) is not disqualified as prior art if evidence is provided to show common ownership by, or an obligation of assignment to,

the same person at the time the invention was made. Such a commonly owned reference is only disqualified when

(A) proper evidence is filed,

(B) the reference only qualifies as prior art under 35 U.S.C. 102(f) or (g), or 35 U.S.C. 102(e) for applications filed on or after November 29, 1999, (e.g. not 35 U.S.C. 102(a) or (b)) and

(C) the reference was used in an obviousness rejection under 35 U.S.C. 103(a).

Applications and patents will be considered to be owned by, or subject to an obligation of assignment to, the same person, at the time the invention was made, if the applicant(s) or an attorney or agent of record makes a statement to the effect that the application and the reference were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person(s) or organization(s)." [*underlining added*]

Furthermore, MPEP 706.02(l)(2)II states:

"The following statement is sufficient evidence to establish common ownership of, or an obligation for assignment to, the same person(s) or organizations(s):

> Applications and references (whether patents, patent applications, patent application publications, etc.) will be considered by the examiner to be owned by, or subject to an obligation of assignment to the same person, at the time the invention was made, if the applicant(s) or an attorney or agent of record makes a statement to the effect that the application and the reference were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person." [*underlining added*]

On page 15 of the Applicant's Response of 9/03/2004, an attorney of record in the present application made such a statement regarding the present application and the Horton patent. The present application was filed on or after November 29, 1999. Furthermore, the Horton patent does not qualify as prior art under any of the sections 102(a), (b), (c) or (d). Thus, the obviousness rejection of claim 12 based on the Horton patent is not proper and should be rescinded. Independent claim 11 has been amended to include the subject matter of claim 12, and therefore, claim 11 is in condition for allowance.

Each of independent claims 18 and 19 have been amended to include the subject matter of claim 12, and thus, are in condition for allowance.

CONCLUSION

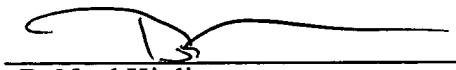
Applicant submits that the application is in condition for allowance, and an early notice to that effect is requested. If any extensions of time (under 37 C.F.R. § 1.136) are necessary to prevent the above referenced application(s) from becoming abandoned, Applicant hereby petitions for such extensions. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert & Goetzel, P.C. Deposit Account No. 501505/5500-60900/BNK.

Also enclosed herewith are the following items:

☒ Return Receipt Postcard

☐ Fee Authorization Form authorizing a deposit account debit in the amount of $___ for fees ( ).

Respectfully submitted,



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Date: 2-23-05